

During the course of this exercise, the various participants were seated at tables labeled, "Legal" (Attorney General), "Federal" (which included such agencies as the U.S. Attorney, the FBI, HHS, etc.), "State" (which included the Governor, Community Health, State Police, etc.), "Local" (which included local health officials as well as hospital administrators, and Canadian, which included both law enforcement and health representatives).

Participants at these tables were encouraged to raise legal and practical issues, which were then presented for discussion and response to the other participant groups. Among the questions posed were the following, as well as the answers provided. It should be noted that the answers are not binding or necessarily correct, but are indicative of the type of legal responses that could be provided during an emergency with the best information available.

The following questions were posed to the Legal Table (Attorney General):

<u>No.</u>	<u>From</u>	<u>Question</u>	<u>Answer</u>
1	State	May hospitals force staff to treat infected patients or take samples for laboratory testing?	In order to compel anyone to take action, an order pursuant to state law, in Michigan being sections 2451 and 2251 of the Public Health Code, would need to be issued. If a person still refused to comply, a specific court order would need to be issued or a person could be threatened with arrest since a violation of the issued orders are misdemeanors. The state could also send its own employees to investigate and collect samples under Rule 325.174. Local health department officials could do likewise.
2	State	Do public officials have the right to obtain or demand the names and addresses of hospital employees who may have left the hospital and may have been exposed to small pox?	Again, it was noted that the Michigan Public Health Code, MCL 333.2241, provides for the issuance of an order to obtain any needed information. In addition, Rule 325.174 and Michigan Compiled Law 333.2231 require the disclosure of identification information of persons exposed to a communicable disease.
3	Local	Are internet sales of vaccines restricted or prohibited by state or federal law?	Under state law, MCL 333.16291, the Attorney General, at the request of the Department of Community Health, could seek an <i>ex parte</i> injunction against the owner of a website or the internet service provider to prevent the unlawful practice of medicine or pharmacy. The Attorney General in the State of Michigan would work closely with the Food and Drug Administration since most websites are

			located outside the State of Michigan.
4	Local	This question involves potential conflicts between state and local health officials. In one instance it is asked whether the local health officer could order the cancellation of a public event if approval to hold the gathering has been granted by the state authority. Similarly, what if there is a disagreement between the decision to order vaccinations between local and state officials.	No specific state law was located that is directed towards the resolution of conflicting decisions or orders between state and local public health officials. In all likelihood, such a disagreement occur, an order of the governor would be sought and, if issued, would constitute the law in this state.
5	Canadian	May a Michigan quarantine order be enforced in Canada? And as a follow-up, if a criminal warrant were issued for a violation of a quarantine order, could that criminal warrant be enforced or executed in Canada?	Initially, it was noted that there is no legal basis under state law for the enforcement of a quarantine order in another state or country. However, if an arrest warrant were issued, depending on treaty provisions, Ontario police would be asked to execute the arrest.
6	Canadian	Given HIPAA's strict limitations on the disclosure of health information, may Michigan inform Canadian public health officials that an individual infected or exposed to a disease was in Canada?	Pursuant to Rule 164.512, HIPAA regulations may be waived during certain public health emergencies or in the event of a bioterrorist attack. Therefore, it was determined that in this scenario the information could be disclosed to an official in Canada who is acting in collaboration with and at the direction of a public health authority.
7	State	In the event of an emergency, the legal system would be impacted due to the closing of courts and the expiration of filing and response deadlines. How would litigants be protected in an event of an emergency?	The Supreme Court answered that under existing court rules (1.105), the chief judge could suspend any deadline in order to protect the rights of litigants and to prevent any injustice due to the expiration of a court-imposed deadline.
8	State	It is assumed that the media has requested copies of correspondence, e-mails and other materials relating to an emergency. The Department of Community Health asks whether they can deny such a request under existing Freedom of Information Act laws.	The Attorney General responded that under Section 13 of the Michigan Freedom of Information Act confidential information is exempt from disclosure. The Public Health Code, MCL 333.2601, deals with confidentiality of medical information. However, some information, with appropriate redactions would need to be disclosed if the director had not declared the investigations to be confidential under Section 26.31 of the Public Health Code. The director could

			also keep information confidential as part of an imminent danger order issued under Sections 2251 or 2451 of the Public Health Code.
9	Local	May health providers in one community be used at another community where they do not have hospital privileges?	It was determined that the question of credentialing would be left to the hospital. In the event of a declaration of a disaster or emergency, the Governor could direct that privileges be provided.
10	Local	May a hospital "lock down" its facility in order to keep staff and visitors restricted in the event of the outbreak of a communicable disease?	It was determined that a hospital may not, on its own, order a quarantine or in any way restrain the movement of individuals. Instead an order would need to be sought from the local or state health authorities under Sections 2451 and 2453 of the Public Health Code in order to keep individuals in a restricted area during an epidemic. Hospital officials also expressed caution that any self-imposed lock down could lead to civil liability for false imprisonment or even possible criminal action.
11	Local	May laboratory officials be forced to perform tests involving material which was deemed to be exposed to a contagious disease and whether pilots could be forced to transport samples to the state lab?	It was determined for the most part these involve employment issues and that individuals normally could not be compelled to perform such tasks. It was suggested that a direct order could be issued and the employee notified that the refusal to exercise their responsibilities could lead to dismissal. However, if the employee still refused, alternative means would need to be found in order to conduct necessary tests or transport lab samples.
12	Local	May a hospital refuse to allow a doctor without privileges to practice at the facility for the reason that the hospital's malpractice insurance did not cover such individuals? Given such liability concerns may the state compel to the hospital to grant privileges?	It was concluded that a doctor could be deemed an agent of the Department of Community Health and, as such, the hospital would be required to provide access. In the event of a declaration of an emergency or disaster, the State Emergency Management Act would provide protection against liability, although the state could not agree to indemnify the hospital in the event of a lawsuit
13	Local	If the hospital is in a lockdown state, can the hospital legally refuse to allow critically ill or injured patients into their facility and can it legally divert	It was concluded that if the ambulance is not owned by the hospital or is already on hospital grounds, it may be diverted to another hospital without violating ENTALA. If the ambulance is on hospital

		ambulances?	grounds it may be diverted if the hospital does not have adequate staff or facilities. However, if the hospital is deemed to have resources it must perform screenings and stabilize the patient before transporting the patient to another facility.
14	Local	May a travel agency be compelled to release the names of individuals who have attended a meeting at which it is believed that the attendees were exposed to a communicable disease?	The Attorney General determined that a public health inspection warrant could be issued under state law, MCL 333.2242, to a travel agency requiring the disclosure of information. Should the agency refuse to comply, it would be necessary to petition the court for an order compelling the disclosure.
15	Local	May a hospital allow persons not licensed to practice medicine, such as veterinarians and dentists, to perform procedures on individuals being treated at the hospital?	It was determined that only if a declaration of an emergency were issued could such individuals be allowed to practice medicine and even then it would have to be under the direction of a licensed physician.
16	Local	Whose responsibility is it to notify Canadian health officials in the event a Canadian citizen is exposed to a communicable disease in the United States, but is believed to have returned to his home in Canada?	It was determined that normally a local or state health official would have the responsibility of making proper notification. Such policy should be determined in advance of such an event and appropriate contact persons identified in Canada and other states.
17	Local	Is the local health department legally obligated to provide food and other necessities to individuals who are quarantined and is an individual who is quarantined protected from employment dismissal?	It was determined that there is no law which expressly provides who is responsible for ensuring that necessities such as food and water are provided. As a practical matter, the local health officials would provide such necessities. Questions of reimbursement for costs would be determined at a later time. Similarly, there is no law expressly protecting employees from employment dismissal. However, again it was determined that in the event of an emergency an executive order could be issued prohibiting such dismissals and also providing for the reimbursement of costs incidental to responding to an emergency or disaster.
18	Local	May a health officer or medical examiner order the cremation of a body without obtaining permission from the immediate family?	The response is that such action can only be taken pursuant to an order issued by the Governor after the declaration of an emergency or disaster. In such instances, it is believed that the state would be responsible for all costs.

19	Local	May public health authorities access information usually available to law enforcement officers when pursuing potential witnesses or victims who have been exposed to a contagious virus and are such authorities subject to Fourth Amendment restrictions?	The Attorney General responded that like any government agency, the Fourth Amendment would restrict the activities of public health authorities in the same way as it would any police agency. If a public health authority is working in conjunction with the police it would also be able to access databases normally available to law enforcement officers.
20	Local	Do county jail inmates have any legal rights to demand to be moved to another facility when it is believed that a contagious virus has been introduced in the facility?	Normally, inmates do not have any legal rights to demand movement. However, state and county officials have the responsibility to ensure that inmates are protected and not unnecessarily exposed to any health risks. The decision as to whether the inmates need to be moved will be left to local and state health officials working in conjunction with jail administrators.
21	Canadian	Do Michigan public health statutes apply to Canadian citizens while visiting the state?	The Attorney General responded that any person in the State of Michigan would be subject to such laws, subject to consulate notification.
22	State	What legal authority do police have to use force in order to compel vaccination or enforce a quarantine order?	If the actions of the individual amount to a crime, and in many instances a violation of an emergency order of the Governor or certain orders of the Public Health Department are misdemeanors, then the police can use the necessary force to affect an arrest, keeping in mind that fatal force cannot be used to arrest on a misdemeanor.
23	State	Who has the authority to issue a detainer order, what is the scope of the authority, what standards are used and what enforcement can be taken in the event an order is violated?	The Attorney General responded that if health officials conclude that imminent danger is present or action is necessary to control an epidemic, health officials can issue an order under state law, MCL 333.2251 or 332.2453, to effectively detain or exclude persons from a hospital. To refuse to obey a lawful public health order is a misdemeanor, MCL 339.1299. If the violation occurs in the presence of a police officer, force not rising to deadly force, can be used to affect an arrest.
24	Local	May a hospital keep its employees in the facility absent a quarantine order?	The Attorney General responded that at Michigan law, MCL 333.2451 and 333.2453, authorizes a local health department to issue an order to lock down a hospital in the case of an epidemic.

25	State	May police gain access to information provided to public health authorities as part of a criminal investigation?	The Attorney General responded that HIPAA does not prohibit the sharing of information with police under such circumstances. Similarly, state law, MCL 333.2433 allows the sharing of medical information in such instances.
26	Local	May public health officials override a family request to return an infected body and what recourse do public health officers have to compel funeral homes to take such bodies for cremation or storage?	The Attorney General responded that state law, MCL 750.160c(1), only requires funeral directors to provide a service upon agreement. Administrative Rule 325.1141 provides that a smallpox victim's body cannot be transported unless embalmed and disinfected. The Governor, through an executive order, however, can compel state officials or national guard to take charge of and dispose of a body. The Governor can also suspend state law requiring a body be released for religious burial.
27	State	May information concerning suspected smallpox be communicated through the LEIN system and how would officers be notified via the LEIN that a person may have been exposed to smallpox so that they may protect themselves when approaching that individual?	LEIN could be used as a vehicle to send administrative messages or bulletins to any Michigan law enforcement agency. Vehicles or subjects who may have been exposed to a communicable disease could be identified and noted in the (comments) field of the LEIN message.

The following questions were posed to the Canadian table:

1	Local	<p>An American citizen is found to have been exposed to and is showing symptoms of smallpox while in Canada. The questions raised are:</p> <ol style="list-style-type: none"> 1. Would the individual be treated in Canada or be required to return to the United States for treatment? 2. Would U.S. border officials refuse his entry into the United States? 	<p>The Canadian table responded that they would treat the individual and make arrangements to sent the person back to the United States when it was determined that the person could safety be transported. The question as to whether the person would be allowed to enter the United States would need to be addressed by the United States Immigration and Customs officials.</p>
2	State	<p>What legal barriers exist to the transporting of an infected body of a Canadian citizen into Canada?</p>	<p>Canadian officials responded that the transport of an infected body into Canada may require the approval of the local coroner. Local funeral homes would also need to be notified in the event precautions were required and adherence to the federal smallpox contingency plan pertaining to the disposal and handling of deceased bodies would be followed. It was suggested that the following website may answer this question. www.hc-sc.gc.ca/english/epr/contingency_plan-annex_j.html.</p>
3	State	<p>Can state and local public health officials share health information about exposed Canadians with Canadian health officials under HIPAA?</p>	<p>The Canadian table responded that based on information from the Attorney General's Office that HIPAA regulations would be waived in the event of an emergency under Rule 164.512, it was believed that that information could be disclosed to an official of a foreign government.</p>
4	State	<p>May a Canadian law enforcement official detain a suspected infected individual who has crossed into Canada and do Canadian laws prevent Canadian health officials from sharing health information with health officials in the United States?</p>	<p>The Canadian table responded that an individual crossing into Canada would be detained under a Canadian-issued quarantine. It was also determined that Canadian law does not prevent the sharing of information in the event of a medical emergency provided that the person receiving the information agreed to keep the information confidential.</p>
5	State	<p>Assuming that there is an outbreak of a communicable disease in the United States, would Canadian Customs' officials begin stopping people at the border and prohibiting them from entering into Canada?</p>	<p>The Canadian officials responded that at this stage of the outbreak there would be no closing of the border. However, screening would be increased and any potential health issues would be referred to the local public health officials.</p>

A number of questions were posed to the federal table. Among them were the following:

1	State	Can the Canadian doctor be compensated for vaccine complications under the United States compensation plan?	The federal table replied that the criteria for being covered under the smallpox vaccination program includes the requirement that the individual vaccinated have volunteered to be vaccinated "prior to the time at which the secretary [of HHS] publicly announces an active case of smallpox has been identified ..." (42 USC § 239(2)(c)). So far under the scenario presented the Canadian doctor probably would not be eligible. However, if the doctor was vaccinated sooner, and in "a role identified in a ... smallpox emergency response plan ..." he or she should be eligible.
2	State	How is a hospital compensated for its loss of business following a smallpox outbreak?	There is no broadly applicable compensation plan currently in place. There is some Canadian precedent for post-disease legislation to compensate hospitals, but it is uncertain that that would be repeated in the United States.